

**Federal Energy Regulatory Commission**

**§ 35.43**

**ELECTRIC TRANSMISSION ASSETS AND/OR NATURAL GAS INTRASTATE PIPELINES AND/OR GAS STORAGE FACILITIES**

Filing entity and its energy affiliates	Asset name and use	Owned by	Controlled by	Date control transferred	Location		Size
					Balancing authority area	Geographic region (per Appendix D)	
ABC Corp	CBA Line, used to interconnect Green Cogen to New York ISO transmission system.	ABC Corp	ABC Corp	NA* .....	New York ISO .....	Northeast	approximately five-mile, 500 kV line.
Etc. LP .....	Nowhere Pipeline, used to connect Storage LLC's—Longway Pipeline to ABC falls plant #1.	Etc. LP ...	Etc. LP ...	NA .....	ABC balancing authority area.	Central ...	approximately 14 miles of natural gas pipeline and related equipment with 50 MMcf/d capacity.

\*If the field is not applicable please indicate so by inputting (NA).

**Subpart I—Cross-Subsidization Restrictions on Affiliate Transactions**

SOURCE: 73 FR 11025, Feb. 29, 2008, unless otherwise noted.

**§ 35.43 Generally.**

(a) For purposes of this subpart:

(1) *Affiliate* of a specified company means:

(i) For any person other than an exempt wholesale generator:

(A) Any person that directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the specified company;

(B) Any company 10 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by the specified company;

(C) Any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate; and

(D) Any person that is under common control with the specified company.

(E) For purposes of paragraph (a)(1)(i) of this section, owning, controlling or holding with power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control.

(ii) For any exempt wholesale generator (as defined under §366.1 of this chapter), consistent with section 214 of the Federal Power Act (16 U.S.C. 824m), which provides that “affiliate” will have the same meaning as provided in section 2(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79b(a)(11)):

(A) Any person that directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of the specified company;

(B) Any company 5 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by the specified company;

(C) Any individual who is an officer or director of the specified company, or of any company which is an affiliate thereof under paragraph (a)(1)(ii)(A) of this section; and

(D) Any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length

bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate.

(2) *Captive customers* means any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation.

(3) *Franchised public utility* means a public utility with a franchised service obligation under state law.

(4) *Market-regulated power sales affiliate* means any power seller affiliate other than a franchised public utility, including a power marketer, exempt wholesale generator, qualifying facility or other power seller affiliate, whose power sales are regulated in whole or in part on a market-rate basis.

(5) *Non-utility affiliate* means any affiliate that is not in the power sales or transmission business, other than a local gas distribution company or an interstate natural gas pipeline.

(b) The provisions of this subpart apply to all franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities.

**§ 35.44 Protections against affiliate cross-subsidization.**

(a) *Restriction on affiliate sales of electric energy.* No wholesale sale of electric energy may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving Commission authorization for the transaction under section 205 of the Federal Power Act. This requirement does not apply to energy sales from a qualifying facility, as defined by 18 CFR 292.101, made under market-based rate authority granted by the Commission.

(b) *Non-power goods or services.*

(1) Unless otherwise permitted by Commission rule or order, and except as permitted by paragraph (b)(4) of this section, sales of any non-power goods or services by a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, including sales made to or

through its affiliated exempt wholesale generators or qualifying facilities, to a market-regulated power sales affiliate or non-utility affiliate must be at the higher of cost or market price.

(2) Unless otherwise permitted by Commission rule or order, and except as permitted by paragraphs (b)(3) and (b)(4) of this section, a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, may not purchase or receive non-power goods and services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market.

(3) A franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, may only purchase or receive non-power goods and services from a centralized service company at cost.

(4) A company in a single-state holding company system, as defined in § 366.3(c)(1) of this chapter, may provide general administrative and management non-power goods and services to, or receive such goods and services from, other companies in the same holding company system, at cost, provided that the only parties to transactions involving these non-power goods and services are affiliates or associate companies, as defined in § 366.1 of this chapter, of a holding company in the holding company system.

(c) *Exemption for price under fuel adjustment clause regulations.* Where the price of fuel from a company-owned or controlled source is found or presumed under § 35.14 to be reasonable and includable in the adjustment clause, transactions involving that fuel shall be exempt from the affiliate price restrictions in § 35.44(b).

[73 FR 11025, Feb. 29, 2008, as amended by Order 707–A, 73 FR 43083, July 24, 2008]

**PART 36—RULES CONCERNING APPLICATIONS FOR TRANSMISSION SERVICES UNDER SECTION 211 OF THE FEDERAL POWER ACT**

AUTHORITY: 5 U.S.C. 551–557; 16 U.S.C. 791a–825r; 31 U.S.C. 9701; 42 U.S.C. 7107–7352.